*E-FILED - 3/26/14*

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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| JAMES EDWARD WILLIAMS,<br><br>Plaintiff,<br><br>vs.<br><br>CASTILLO, et al.,<br><br>Defendants. | ) | No. C 12-1116 RMW (PR)<br><br>ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM |

Plaintiff, a state prisoner proceeding pro se, brought the instant civil rights complaint pursuant to 42 U.S.C. § 1983, alleging that officials of Salinas Valley State Prison ("SVSP") violated his Eighth Amendment rights by being deliberately indifferent to the lack of sanitation in plaintiff's cell. Finding that the complaint, liberally construed, stated a cognizable claim, the court ordered service upon defendants. Defendants moved for summary judgment. Plaintiff has filed an opposition, defendants have filed a reply, and plaintiff has filed a response to defendants' reply.

After a review of the record, and for the reasons set forth below, the court GRANTS in

part and DENIES in part defendants' motion for summary judgment.[1]

## BACKGROUND[2]

### I. SVSP Inmate Toilets

The toilets in SVSP cells do not have individual tanks to store water. (Mejia Decl. at ¶ 5.) The toilets have a device that limits the number of times an inmate can flush water into the toilet bowl in order to hinder an inmate's ability to flush contraband. (Id.) The toilet in Facility D-1 can be "force flushed" if they are not working properly. (Id.) When a toilet is not functioning properly, the inmate is given an opportunity to use toilet facilities in another part of the prison. (Beattie Decl. at ¶ 4; Mejia Decl. at ¶ 7.)

### II. Plaintiff's toilet

On March 29, 2011, plaintiff was housed in Administrative Segretation ("Ad Seg"), Facility D-1, cell 226, at SVSP. (Maiorino Decl. Ex. A AGO 008.) From May 29, 2011 through June 30, 2011, plaintiff did not have a working toilet. (Compl. at 3.) During that time, plaintiff was not given the opportunity to move to another cell, or offered the opportunity to use another toilet except for one time when defendant Rodriguez offered plaintiff the opportunity to use another toilet. (Id.) The defendants were aware that the toilet was filled with urine, feces, and toilet paper, but refused to move plaintiff to another cell. (Id. and Pl. Decl. at ¶¶ 37-38.)

At some point, defendant Pato notified maintenance that plaintiff's toilet needed repair.

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[1] Plaintiff's motion to stay the motion for summary judgment, filed after the motion had already been fully briefed, is DENIED. Plaintiff requests a stay so that he may depose Dr. Miller regarding her observations of plaintiff's toilet on June 14, 2011. Plaintiff's motion fails to comply with Federal Rule of Civil Procedure 56(d). Fed. R. Civ. P. 56(d). Further, plaintiff fails to demonstrate that he has been diligent in his attempt to get this information from Dr. Miller prior to the submission of this motion for summary judgment. Finally, the court concludes that the information plaintiff wishes to obtain from Dr. Miller's deposition would have no effect on the court's determination of defendants' motion for summary judgment. See Family Home and Finance Center, Inc. v. Federal Home Loan Mortgage Corp., 525 F.3d 822, 827 (9th Cir. 2008) (Rule 56(d) requires that the requesting party show (1) it has set forth in affidavit form the specific facts it hopes to elicit from further discovery, (2) the facts sought exist, and (3) the sought-after facts are essential to oppose summary judgment.).

[2] The following facts are taken in the light most favorable to plaintiff.

(Pato Am. Decl. at ¶ 5.)

Defendant Ceballos also knew about plaintiff's toilet malfunction and knew that maintenance had been contacted to repair the toilet. (Ceballos Decl. at ¶ 5.) Ceballos reset the water supply to plaintiff's toilet several times as a temporary fix to plaintiff's toilet until maintenance came to repair it. (Id. at 6.)

Defendant Castillo was on vacation from June 1, 2011 through June 15, 2011. (Castillo Decl. at ¶ 5.) When he returned from vacation, plaintiff told Castillo about his toilet not working. (Id.) Castillo investigated, and learned that maintenance had already been notified. (Id.)

Plaintiff alleges that defendant Rodriguez gave him access to an alternate toilet one time, but denied him access on all other occasions. (Pl. Decl. at ¶ 18.) Rodriguez knew that the maintenance crew had been notified of the malfunction. (Rodriguez Decl. at ¶ 6.)

Defendant Machuca states that plaintiff told him that plaintiff's toilet was not working. (Machuca Decl. at ¶ 5.) Machuca told plaintiff that a work-order had been submitted to maintenance to repair the toilet. (Id.)

On June 14, 2011, Dr. M.A. Miller was conferencing with an inmate in the cell next to plaintiff. (Maiorino Decl., Ex. A AGO 038.) Her notes indicate that she noticed a "maloderous smell" coming from plaintiff's cell. (Id.) Plaintiff overheard her and asked to speak with her. (Id.) When Dr. Miller spoke with plaintiff, plaintiff told her about the plumbing issue he was having, and told her that it had been ongoing for almost two weeks. (Id.) Plaintiff asked Dr. Miller to report it to the plumber, and she indicated that she would because the smell made it difficult for her to work. (Id.) Dr. Miller reported the situation to the building staff, who informed her that they were aware of it already and had put in the work order. (Id.) Dr. Miller also called "Plan Ops" to report the situation. (Id.)

On June 21, 2011, maintenance came and unstopped plaintiff's sink and flushed plaintiff's toilet, but said they would have to return because they did not have proper part to permanently fix plaintiff's toilet. (Pl. Decl. at ¶ 40.) From June 21, 2011, through July 1, 2011,

plaintiff used a paper bag to defecate in, but continued to urinate in the broken toilet. (Id. at ¶ 41.)

## DISCUSSION

### A. Standard of Review

Summary judgment is proper where the pleadings, discovery and affidavits demonstrate that there is "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Material facts are those which may affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. Id.

The party moving for summary judgment bears the initial burden of identifying those portions of the pleadings, discovery and affidavits which demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Cattrett, 477 U.S. 317, 323 (1986). Where the moving party will have the burden of proof on an issue at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party. But on an issue for which the opposing party will have the burden of proof at trial, as is the case here, the moving party need only point out "that there is an absence of evidence to support the nonmoving party's case." Id. at 325.

Once the moving party meets its initial burden, the nonmoving party must go beyond the pleadings and, by its own affidavits or discovery, "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). The court is only concerned with disputes over material facts and "factual disputes that are irrelevant or unnecessary will not be counted." Liberty Lobby, Inc., 477 U.S. at 248. It is not the task of the court to scour the record in search of a genuine issue of triable fact. Keenan v. Allen, 91 F.3d 1275, 1279 (9th Cir. 1996). The nonmoving party has the burden of identifying, with reasonable particularity, the evidence that precludes summary judgment. Id. If the nonmoving party fails to make this showing, "the moving party is entitled to judgment as a matter of law." Celotex Corp., 477 U.S. at 323.

**B. Plaintiff's Claim**

Plaintiff claims that defendants were deliberately indifferent to his sanitation needs because his in-cell toilet was not working for 31 days. Specifically, he alleges that he personally showed each defendant that the toilet in his cell was full of feces, urine, and toilet paper, and was not working. Plaintiff also requested that he be moved to a cell with a working toilet, and each defendant refused to do so. Defendants argue that plaintiff was not deprived of a working toilet for 31 days, and was not denied the use of toilet facilities. Defendants further argue that plaintiff's claim is not plausible; that defendants did not exhibit deliberate indifference because plaintiff had extensive contact with medical and mental health staff; and that defendants are entitled to qualified immunity.

With respect to defendants' arguments, defendants rely on their version of the facts to support their position. However, at this stage of the proceedings, the court must view the facts in the light most favorable to plaintiff. Thus, defendants' version of facts, when contradicted by plaintiff, is not sufficient to sustain their motion for summary judgment.

The Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones. See Farmer v. Brennan, 511 U.S. 825, 832 (1994). The treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment. See Helling v. McKinney, 509 U.S. 25, 31 (1993). The Amendment also imposes duties on these officials, who must provide all prisoners with the basic necessities of life such as food, clothing, shelter, sanitation, medical care and personal safety. See Farmer, 511 U.S. at 832.

A prison official violates the Eighth Amendment when two requirements are met: (1) the deprivation alleged must be, objectively, sufficiently serious, and (2) the prison official possesses a sufficiently culpable state of mind. Id. at 834 (citing Wilson v. Seiter, 501 U.S. 294, 297-98 (1991).

In determining whether a deprivation of a basic necessity is sufficiently serious to satisfy the objective component of an Eighth Amendment claim, a court must consider the

circumstances, nature, and duration of the deprivation. The more basic the need, the shorter the time it can be withheld. See Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000). Substantial deprivations of shelter, food, drinking water or sanitation for four days, for example, are sufficiently serious to satisfy the objective component of an Eighth Amendment claim. See id. at 732-733; Anderson v. County of Kern, 45 F.3d 1310, 1314 (9th Cir. 1995).

"Usually, a more offensive condition will be of constitutional significance when it exists for even a short time, while a less offensive condition will be of constitutional significance only when it has existed for a much longer time." Cockcroft v. Kirkland, 548 F. Supp. 2d 767, 775 (N.D. Cal. 2008). Long-term unsanitary conditions violate the Eighth Amendment, as do non-working toilets. See, e.g., Hearns v. Terhune, 413 F.3d 1036, 1041-42 (9th Cir. 2005) (allegations of serious health hazards in disciplinary segregation yard for a period of nine months, including toilets that did not work, sinks that were rusted and stagnant pools of water infested with insects, and a lack of cold water even though the temperature in the prison yard exceeded 100 degrees, enough to state a claim of unconstitutional prison conditions).

"[S]ubjection of a prisoner to lack of sanitation that is severe or prolonged can constitute an infliction of pain within the meaning of the Eighth Amendment." Anderson v. County of Kern, 45 F.3d 1301, 1314 (9th Cir. 1995). Based on plaintiff's declaration, there remains a genuine dispute of material fact as to whether plaintiff was housed in a cell with an inoperable toilet that is filled with feces, urine, and toilet paper for 31 days, thereby exposing plaintiff to a sanitation issue that rises to the level of a serious harm within the meaning of the Eighth Amendment. See, e.g., Johnson, 217 F.3d at 723 (finding that receiving inedible food, inadequate drinking water, and inadequate access to toilet facilities for four days was sufficient to satisfy objective prong of Eighth Amendment); DeSpain v. Uphoff, 264 F.3d 965, 974 (10th Cir. 2001) (recognizing that "exposure to human waste carries particular weight" when analyzing whether condition is sufficiently serious and listing cases); LaReau v. MacDougall, 473 F.2d 974, 978 (2nd Cir. 1972) ("Causing a man to live, eat, and perhaps sleep in close confines with his own human waste is too debasing and degrading to be permitted.").

Thus, the remaining question is whether there is a genuine issue of disputed fact regarding whether defendants possessed a culpable state of mind.

1. Defendants Ceja, Curry, Mejia, Tovar, and Beattie

Despite plaintiff's allegation that plaintiff informed each defendant that his toilet was inoperable and requested a cell move, defendants Ceja, Curry, and Mejia dispute knowledge of an inoperable toilet. (Ceja Decl. at ¶ 4; Curry Decl. at ¶ 4; Mejia Decl. at ¶ 8.) Defendant Tovar does not admit or deny that he knew about plaintiff's inoperable toilet. Defendant Beattie admits that he knew plaintiff's toilet was malfunctioning, and offered to escort plaintiff to a working toilet, but plaintiff refused. (Beattie Decl. at ¶ 5.) At the very least, viewing the facts in the light most favorable to plaintiff, defendants Ceja, Curry, Mejia, Tovar, and Beattie knew about plaintiff's inoperable toilet and refused to do anything about it.

In Farmer, the Supreme Court held that to act with deliberate indifference, an official must have actual knowledge of an excessive risk to inmate health or safety and must deliberately disregard that risk. See 511 U.S. at 837. In such cases, the plaintiff must show that the prison officials had actual knowledge of the plaintiff's basic human needs and deliberately refused to meet those needs. Whether an official possessed such knowledge "is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence . . . ." Id. at 842. Because the parties dispute whether defendants had actual knowledge and deliberately refused to do anything about it, summary judgment cannot be granted as to defendants Ceja, Curry, Mejia, Tovar, and Beattie.

Defendants also argue that Ceja, Curry, Mejia, Tovar, and Beattie are entitled to qualified immunity. The defense of qualified immunity protects "government officials . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). A court considering a claim of qualified immunity must determine: (1) whether the plaintiff has alleged the deprivation of an actual constitutional right, and (2) whether such right was clearly established such that it would be clear to a reasonable officer that

his conduct was unlawful in the situation he confronted. See Pearson v. Callahan, 129 S. Ct. 808, 818 (2009). The court may exercise its discretion in deciding which prong to address first, in light of the particular circumstances of each case. Id.

The qualified immunity inquiry is separate from the constitutional inquiry for a claim of deliberate indifference under the Eight Amendment. Estate of Ford v. Caden, 301 F.3d 1043, 1053 (9th Cir. 2002). For a qualified immunity analysis, the court need not determine whether the facts alleged show that defendants acted with deliberate indifference. See Osolinski v. Kane, 92 F.3d 934, 936 (9th Cir. 1996). Rather, the focus of review is the objective requirement. Id. at 937. The court need only review the relevant law to determine whether, in light of clearly established principles at the time of the incident, the officials could have reasonably believed their conduct was lawful. See id. at 939.

A defendant must show that a reasonable officer could have believed that the conduct was lawful in light of clearly established law and the information the officer possessed. Galvin v. Hay, 374 F.3d 739, 756-67 (9th Cir. 2004). Whether a reasonable official could have believed the action taken was lawful is a mixed question of law and fact: "It involves an objective test of whether a reasonable official could have believed that his conduct was lawful in light of what he knew and the action he took." Sinaloa Lake Owners Ass'n v. City of Simi Valley, 70 F.3d 1095, 1099 (9th Cir. 1995). "If there are genuine issues of material fact in issue relating to the historical facts of what the official knew or what he did, it is clear that these are questions of fact for the jury to determine." Id.

Here, the court cannot grant qualified immunity to Ceja, Curry, Mejia, Tovar, and Beattie because there are genuine issues of material facts at issue regarding what they knew and what they did. Accordingly, defendants' motion for summary judgment as to Ceja, Curry, Mejia, Tovar and Beattie is DENIED.

2. Defendants Ceballos, Castillo, Pato, Machuca, and Rodriguez

Defendants Ceballos, Castillo, Pato, Machuca, and Rodriguez all admit that they knew at some point that plaintiff's toilet was inoperable. (Ceballos Decl. at ¶ 5; Castillo Decl. at ¶ 5;

Pato Am. Decl. at ¶ 5; Machuca Decl. at ¶ 5; Rodriguez Decl. at ¶ 6.) None of the parties give any specific dates as to when they discovered or when plaintiff informed them of the inoperable toilet. Nonetheless, the evidence is undisputed that Ceballow, Castillo, Pato, Machuca, and Rodriguez were aware of the situation, and were also aware that maintenance had been notified and a work-order submitted to rectify the situation. (Ceballos Decl. at ¶ 5; Castillo Decl. at ¶ 5; Pato Am. Decl. at ¶ 5; Machuca Decl. at ¶ 5; Rodriguez Decl. at ¶ 6.) In fact, Pato was the one who notified maintenance of the problem. (Pato Decl. at ¶ 5.) In addition, Ceballos reset the water supply to plaintiff's toilet several times as a temporary fix to plaintiff's toilet until maintenance came to repair it. (Ceballos Decl. at ¶ 6.) Rodriguez gave plaintiff access to an alternate toilet on one occasion. (Pl. Decl. at ¶ 18.)

Viewing the facts in the light most favorable to plaintiff, these defendants knew that plaintiff's toilet was inoperable, and also knew that maintenance had been contacted to repair it. The evidence shows that, on June 21, 2011, maintenance came to fix the toilet, and although they may not have been able to fully fix the toilet, they did flush the toilet, thereby clearing it of the feces, urine, and toilet paper. (Pl. Decl. at ¶ 40.) Thus, at most, plaintiff's toilet was filled with human waste for a period of three weeks, from May 30, 2011, through June 21, 2011. There is no evidence that any raw sewage overflowed from plaintiff's toilet, implying that plaintiff must have used some other receptacle in which to urinate and defecate at times. There is also no evidence that plaintiff was unable to access other workable toilets when he needed to utilize a working toilet.

The undisputed evidence shows that Ceballos, Castillo, Pato, Machuca, and Rodriguez were aware of the inoperable toilet, discovered that the maintenance department was already aware of and working on rectifying the situation. Pato notified the maintenance department. Castillo investigated the situation upon his return from vacation and learned that maintenance had already been contacted. Ceballos reset the water supply several times. Rodriguez gave plaintiff access to an alternate toilet. Machuca informed plaintiff that a work-order had already been submitted to maintenance.

The requisite state of mind for deliberate indifference is one of subjective recklessness, which entails more than ordinary lack of due care. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012) (citation and quotation marks omitted). Deliberate indifference is shown where a prison official "knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." Farmer, 511 U.S. at 847. Based on the evidence, Ceballos, Castillo, Pato, Machuca, and Rodriguez may have been negligent in failing to do more, but there is no evidence that they were deliberately indifferent in their responses to plaintiff's inoperable toilet. See id. at 844 ("prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted").

Accordingly, defendants' motion for summary judgment as to Ceballos, Castillo, Pato, Machuca, and Rodriguez is GRANTED. The court finds it unnecessary to address defendants' argument regarding qualified immunity.

**C. Referral to Pro Se Prisoner Settlement Program**

Prior to setting this matter for trial and appointing pro bono counsel to represent plaintiff for that purpose, the court finds good cause to refer this matter to Judge Vadas pursuant to the Pro Se Prisoner Settlement Program for settlement proceedings on the claim set forth above. The proceedings will consist of one or more conferences as determined by Judge Vadas. The conferences shall be conducted with defendants, or the representative for defendants, attending by videoconferencing if they so choose. If these settlement proceedings do not resolve this matter, the court will then set this matter for trial and consider a motion from plaintiff for appointment of counsel.

**CONCLUSION**

1. Defendants' motion to for summary judgment is GRANTED in part and DENIED in part. The motion is GRANTED as to defendants Ceballos, Castillo, Pato, Machuca, and Rodriguez. The motion is DENIED as to defendants Ceja, Curry, Mejia, Tovar, and Beattie..

2. The instant case is REFERRED to Judge Vadas pursuant to the Pro Se Prisoner

Settlement Program for settlement proceedings on the remaining claim in this action; that is: whether Doctor Williams exhibited deliberate indifference in his management of plaintiff's chronic back pain. The proceedings shall take place within **one-hundred twenty (120) days** of the filing date of this order, or as soon as practicable. Judge Vadas shall coordinate a time and date for a settlement conference with all interested parties or their representatives and, within ten (10) days after the conclusion of the settlement proceedings, file with the court a report regarding the prisoner settlement proceedings. If these settlement proceedings to do not resolve this matter, plaintiff can file a renewed motion for appointment of counsel and the court will then set this matter for trial.

3. The clerk of the court shall mail a copy of the court file, including a copy of this order, to Judge Vadas in Eureka, California.

4. The instant case is STAYED pending the settlement conference proceedings. The clerk is directed to ADMINISTRATIVELY CLOSE this case until further order of the court.

This order terminates docket numbers 56 and 86.

IT IS SO ORDERED.

DATED: 3/26/14

Ronald M. Whyte

RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

JAMES E WILLIAMS,

Plaintiff,

v.

CASTILLO, et al,

Defendant.
_____/

Case Number: CV12-01116 RMW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 23, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James Edward Williams V-54214
Kern Valley State Prison
D-5-113
P.O. Box 5104
Delano, CA 93216

Dated: October 23, 2013

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk